

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 137 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MALPUR GRAM PANCHAYAT

Versus

JAGANNATH C PANDYA

Appearance:

MR RN SHAH for Petitioner

MR HAROOBHAI MEHTA for Respondent No. 1, 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 25/03/98

ORAL JUDGEMENT

This is defendant's Second Appeal.

2. The brief facts are that the plaintiff - respondent claimed ownership and also possession over the disputed land. Apprehending interference in their ownership and possession over the disputed land from the defendant - appellant the Suit for permanent injunction

was filed.

3. The said Suit was resisted inter-alia on the ground that the land in dispute is neither in the ownership nor in possession of the plaintiff - respondent and that the said land is part of the street and it has vested in the Panchayat - defendant - appellant.

4. The trial Court, after considering oral and documentary evidence on record, concluded that the plaintiffs succeed in establishing their title, possessory title as well as possession, over the land in dispute.

5. The Appeal was preferred against the Judgment and Decree of the trial Court which was dismissed.

6. In this Second Appeal three substantial questions of law were formulated. The first two questions relate to plaintiff's title and ownership in disputed land and the third question relates to vesting of the land in dispute in the defendant - panchayat as part of the street.

7. I have heard the learned Counsel for the appellant Shri R.N.Shah and also learned Counsel for the respondent and perused the Judgments of the two Courts below.

8. The question of plaintiff's title in the disputed land is a disputed question of fact on which there is concurrent findings recorded by the two Courts below after appreciating the oral and documentary evidence on record. Likewise the two Courts below through concurrent finding held that the disputed land is not a part of the street nor it has vested in the appellant panchayat. Thus, as a matter of fact the so called three substantial questions of law are not substantial questions of law rather question of finding on fact which have been determined by the concurrent findings of the two Courts below.

9. In the result I do not find any merits in this Appeal. The same is hereby dismissed. The parties shall bear their own costs.

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